# Govindaraju a/l Kuppusamy v Tan Sri Dato' Seri Dr Mahadevan a/l Mahalingam & Anor

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-17D-16–05 OF 2022
AMARJEET SINGH J
19 APRIL 2024

*Legal Profession — Disciplinary proceedings — Disciplinary Board/Committee — First respondent filed complaint with Advocates and Solicitors Disciplinary Board against appellant — Disciplinary Committee found actions of appellant amounted to misconduct involving conflict of interest, unbefitting conduct of acting dishonestly, acting in gross disregard of his client's interests, and failing to adhere to Legal Profession Rules — Disciplinary Board affirmed finding of liability but substituted punishment recommended by Disciplinary Committee — Whether first respondent qualified as a 'complainant' — Whether first respondent had locus standi to lodge disciplinary complaint against appellant — Whether misconduct the appellant was charged with was vague and not specific — Whether appellant ought to be heard before punishment of fine meted out — Legal Profession Act 1976 ss 94(3) & 103D(4) — Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994*

The first respondent and one Sandrasegaran s/o Mahalingam were the executors of the will of one Ratnavale whilst the appellant was an advocate and solicitor who represented Jeyalakshmi d/o Ratnavale ('Jeyalakshmi') and Panchanath s/o Ratnavale, the beneficiaries under the said will in an action against the executors for accounts and distribution of the estate properties whereby one of the properties in dispute was Lot 743, Section 3, Georgetown, North East District, Penang. The dispute in the present case was however not related to the distribution of the estate properties but rather a complaint of misconduct to the Advocates and Solicitors Disciplinary Board ('the Board') against the appellant as an advocate and solicitor. In this regard, the first respondent had lodged a written complaint with the Board attaching supporting documents alleging the following misconduct by the appellant: (a) the appellant had acted improperly and in an unprofessional manner when he knew that probate had been extracted and yet obtained letters of administration making Jeyalakshmi the administrator of the estate and proceeded to transfer properties on that basis (the misconduct of 'conduct amounting to grave impropriety'); and (b) the appellant who had been acting for the beneficiaries of the will on the basis that the will was valid and authentic proceeded to act in conflict of his client's interest by filing a suit on behalf of Ratnavale's second wife, Fam Kim Moy to set aside the will and probate (the

misconduct of 'gross disregard of his client's interest'). The Disciplinary Committee ('the Committee') found that the actions of the appellant amounted to misconduct involving conflict of interest, unbefitting conduct of acting dishonestly, acting in gross disregard of his client's interests, and failing to adhere to the Legal Profession Rules. The Board affirmed the findings of the Committee on misconduct but rejected the punishment of striking off the appellant from the Roll of Advocates and Solicitors as it thought the lesser punishment of a fine of RM50,000 would be more appropriate. The appellant then filed the present appeal premised on the following grounds: (i) the first respondent had no locus standi to lodge the disciplinary complaint against the appellant to the Board ('the 'locus standi' ground') — in this regard, the issue to be determined was whether the first respondent qualified as a 'complainant' for the purposes of disciplinary action against an advocate and solicitor under the Legal Profession Act 1976 ('the LPA'); (ii) the misconduct the appellant was charged with was vague and not specific thus contrary to s 94(3) of the LPA ('the 'vague misconduct' ground'); and (iii) the appellant was not given a right to be heard before the Board reduced the punishment from struck off the Roll of Advocates and Solicitors to a fine as required by s 103D(4) of the LPA ('the 'right to be heard on punishment' ground').

**Held**, dismissing the appellant's appeal:

(1) At the time the first respondent filed his complaint, the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('the said Rules') were still in force. The definition of 'complainant' under the said Rules required a 'complaint' to be made. It was so wide that it could be made by any person against an advocate and solicitor and included the Bar Council or a State Bar Committee. However, the limitation was that the 'complaint' must fulfill the requirements of the said Rules. The word 'complaint' was defined and meant 'a written complaint concerning the misconduct of an advocate and solicitor or a pupil'. Misconduct, inter alia, was a conduct by an advocate and solicitor in a professional capacity or otherwise which amounted to grave impropriety and which conduct included any one or more of the fifteen instances listed in s 94(3) of the LPA (see paras 22–24).

(2) The court was satisfied that the first respondent fell within the definition of 'complainant' under the said Rules. There was a written complaint supported by documents of the misconduct of the appellant. The misconduct, which was clearly set out in the written complaint, was misconduct which fell within the scope of s 94(3) of the LPA, ie the misconducts of 'conduct amounting to grave impropriety' and 'gross disregard of his client's interest'. There was no error of law by the Board in accepting the complaint by the first respondent who satisfied the

criteria of a 'complainant' under the said Rules. In the circumstances, the 'locus standi' ground was devoid of merit (see para 26).

(3) The 'vague misconduct' ground was devoid of merit because by the time the matter went for inquiry, the first respondent had already filed a statutory declaration which set out clearly the misconduct of the appellant and the issues to be determined by the Committee. Further, during the inquiry, the first respondent had stated that the misconduct alleged were under s 94(3)(c), (d), (k), (m), (n) and (o) of the LPA. Therefore, the court was satisfied that the appellant was sufficiently informed and supplied with the facts and particulars of misconduct complained of to enable him to explain away or exculpate himself. The appellant was given the right to be heard which was in conformity with natural justice (see paras 27–28 & 30).

(4) With respect to the 'right to be heard on punishment' ground, at the time of making the decision for the present case, the court followed the Court of Appeal's decision in the case of *Wan Ahmad bin Wan Daud lwn Wan Jawahir bt Haji Harun* [2016] 2 MLJ 51. The court dismissed this ground of appeal on the basis that the punishment of fine was a lighter punishment and therefore not adverse to the appellant under s 103D(4) of the LPA, given that, being struck off the Roll of Advocates and Solicitors was the severest punishment. However, the court was unaware of the written judgment of the Federal Court in *Majlis Peguam Malaysia v Syed Ahmad Imdadz bin Said Abad & Anor* [2024] 1 MLJ 527; [2023] MLRAU 275. In view of the above Federal Court decision, the court's decision on this ground certainly could not stand. The appellant ought to have been heard before the punishment of fine was meted out (see paras 37–39).

**[Bahasa Malaysia summary**

Responden pertama dan Sandrasegaran a/l Mahalingam adalah wasi bagi wasiat seorang yang dikenali sebagai Ratnavale manakala perayu adalah seorang peguam bela dan peguam cara yang mewakili Jeyalakshmi a/p Ratnavale ('Jeyalakshmi') dan Panchanath a/l Ratnavale, benefisiari-benefisiari di bawah wasiat tersebut di dalam satu tindakan terhadap wasi-wasi tersebut untuk akaun dan pembahagian harta pusaka di mana salah satu harta yang dipertikaikan ialah Lot 743, Section 3, Georgetown, North East District, Penang. Pertikaian dalam kes semasa bagaimanapun tidak berkaitan dengan pembahagian harta pusaka sebaliknya berkenaan aduan salah laku kepada Lembaga Tatatertib Peguam bela dan Peguam Cara ('Lembaga tersebut') terhadap perayu sebagai peguam bela dan peguam cara. Dalam hal ini, responden pertama telah membuat aduan bertulis kepada Lembaga tersebut dengan melampirkan dokumen-dokumen sokongan yang mendakwa salah laku berikut oleh perayu: (a) perayu telah bertindak secara tidak wajar dan dalam cara yang tidak profesional apabila dia

A mengetahui bahawa probet telah dikeluarkan namun dia masih mendapatkan surat kuasa mentadbir untuk menjadikan Jeyalakshmi sebagai pentadbir harta pusaka tersebut dan meneruskan untuk memindahkan harta tersebut menggunakannya (sala laku 'kelakuan yang berjumlah kepada perbuatan tidak patut yang serius'; dan (b) perayu yang telah bertindak untuk B benefisiari-benefisiari wasiat tersebut atas dasar bahawa wasiat tersebut adalah sah dan tulen telah melakukan tindakan yang bercanggah dengan kepentingan anak guamnya dengan memfailkan saman bagi pihak isteri kedua Ratnavale, Fam Kim Moy untuk mengenepikan wasiat dan probet tersebut (salah laku C 'terlalu mengabaikan kepentingan kliennya'). Jawatankuasa Tatatertib ('Jawatankuasa tersebut') mendapati bahawa perbuatan perayu adalah salah laku yang melibatkan percanggahan kepentingan, kelakuan tidak sepadan iaitu dengan bertindak tidak jujur, bertindak dengan terlalu mengabaikan kepentingan kliennya, dan gagal mematuhi Kaedah-Kaedah Profesion D Undang-Undang. Lembaga tersebut mengesahkan dapatan Jawatankuasa tersebut mengenai salah laku tetapi menolak hukuman memotong perayu daripada Daftarai peguam bela dan peguam cara kerana berpendapat hukuman yang lebih ringan iaitu denda RM50,000 adalah lebih sesuai. Perayu kemudiannya memfailkan rayuan semasa berdasarkan alasan-alasan berikut: E (i) responden pertama tidak mempunyai locus standi untuk membuat aduan tatatertib terhadap perayu kepada Lembaga tersebut (alasan 'locus standi') — dalam hal ini, isu yang perlu ditentukan ialah sama ada responden pertama layak menjadi 'pengadu' bagi tujuan tindakan tatatertib terhadap peguam bela dan peguam cara di bawah Akta Profesion Undang-Undang 1976 ('APUU'); F (ii) salah laku yang didakwa ke atas perayu adalah tidak jelas dan tidak spesifik justeru bertentangan dengan s 94(3) APUU (alasan 'salah laku yang tidak jelas'); dan (iii) perayu tidak diberi hak untuk didengar sebelum Lembaga tersebut mengurangkan hukuman daripada dipotong daripada Daftarai peguambela dan peguam cara kepada denda seperti yang dikehendaki oleh G s 103D(4) APUU (alasan 'hak untuk didengar berkaitan hukuman').

**Diputuskan**, menolak rayuan perayu:

(1) Pada masa responden pertama memfailkan aduannya, Kaedah-Kaedah Profesion Undang-Undang (Prosiding Tatatertib) (Tribunal Penyiasatan H dan Jawatankuasa Tatatertib) 1994 ('Kaedah-Kaedah tersebut') masih berkuat kuasa. Takrifan 'pengadu' di bawah Kaedah-Kaedah tersebut menghendaki 'aduan' dibuat. Takrifan 'aduan' tersebut begitu luas sehingga ia boleh dibuat oleh mana-mana orang terhadap peguam bela dan peguam cara dan termasuk Majlis Peguam atau Jawatankuasa I Peguam Negeri. Walau bagaimanapun, hadnya ialah 'aduan' tersebut hendaklah memenuhi keperluan Kaedah-Kaedah tersebut. Perkataan 'aduan' ditakrifkan dan bermaksud 'aduan bertulis mengenai salah laku peguam bela dan peguam cara atau pelatih'. Salah laku, antara lain, ialah kelakuan oleh peguam bela dan peguam cara dalam kapasiti profesional

atau sebaliknya yang berjumlah kepada perbuatan tidak patut yang serius dan kelakuan yang termasuk mana-mana satu atau lebih daripada lima belas keadaan yang disenaraikan dalam s 94(3) APUU (lihat perenggan 22–24).

(2) Mahkamah berpuas hati bahawa responden pertama termasuk dalam takrifan 'pengadu' di bawah Kaedah-Kaedah tersebut. Terdapat aduan bertulis yang disokong oleh dokumen-dokumen berkaitan salah laku perayu. Salah laku, yang jelas dinyatakan dalam aduan bertulis tersebut, adalah salah laku yang termasuk dalam skop s 94(3) APUU, iaitu salah laku 'kelakuan yang berjumlah kepada perbuatan tidak patut yang serius' dan 'terlalu mengabaikan kepentingan kliennya'. Tiada kekhilafan undang-undang oleh Lembaga tersebut dalam menerima aduan oleh responden pertama yang memenuhi kriteria 'pengadu' di bawah Kaedah-Kaedah tersebut. Dalam keadaan tersebut, alasan 'locus standi' tersebut tidak mempunyai merit (lihat perenggan 26).

(3) Alasan 'salah laku yang tidak jelas' tersebut adalah tidak bermerit kerana pada masa perkara tersebut dibawa untuk siasatan, responden pertama telah pun memfailkan akuan berkanun yang menyatakan dengan jelas salah laku perayu dan isu-isu yang akan ditentukan oleh Jawatankuasa. Selanjutnya, semasa siasatan, responden pertama telah menyatakan bahawa salah laku yang didakwa adalah di bawah s 94(3)(c), (d), (k), (m), (n) dan (o) APUU. Oleh itu, mahkamah berpuas hati bahawa perayu telah dimaklumkan dengan secukupnya dan dibekalkan dengan fakta dan butir-butir salah laku yang diadukan bagi membolehkannya menjelaskan atau membela dirinya. Perayu telah diberi hak untuk didengar yang selaras dengan keadilan asasi (lihat perenggan 27–28 & 30).

(4) Berkenaan dengan alasan 'hak untuk didengar berkaitan hukuman', semasa membuat keputusan bagi kes semasa, mahkamah mengikuti keputusan Mahkamah Rayuan dalam kes *Wan Ahmad bin Wan Daud lwn Wan Jawahir bt Haji Harun* [2016] 2 MLJ 51. Mahkamah menolak alasan rayuan ini atas dasar bahawa hukuman denda yang dijatuhkan adalah hukuman yang ringan dan oleh itu tidak menjejaskan perayu di bawah s 103D(4) APUU, memandangkan, dipotong daripada Daftarai peguambela dan peguam cara adalah hukuman paling berat. Namun pada ketika itu, mahkamah tidak mengetahui tentang penghakiman bertulis Mahkamah Persekutuan dalam *Majlis Peguam Malaysia v Syed Ahmad Imdadz bin Said Abad & Anor* [2024] 1 MLJ 527; [2023] MLRAU 275. Berdasarkan keputusan Mahkamah Persekutuan di atas, keputusan mahkamah dalam kes semasa berkaitan alasan ini pastinya tidak dapat dipertahankan. Perayu sepatutnya didengar sebelum hukuman denda dikenakan (lihat perenggan 37–39).]

**Cases referred to**

*Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener)* [2018] 2 MLJ 265; [2018] 2 CLJ 1, FC (refd)

*Majlis Peguam Malaysia v Syed Ahmad Imdadz bin Said Abad & Anor* [2024] 1 MLJ 527; [2023] MLRAU 275, FC (refd)

*Majlis Peguam v Dato Sri Dr Muhammad Shafee Abdullah* [2016] 5 MLJ 572; [2016] 8 CLJ 749, FC (refd)

*Panchanath a/l Ratnavale (suing as the beneficiary to the estate of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased under will dated 10 February 1971) v Sandra Segara Mahalingam (sued as the executor and trustee of the last will of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased dated 10 February 1971) & Ors* [2012] 5 MLJ 109, HC (refd)

*Syed Ahmad Imdadz B Said Abas v Imej Muhibah Sdn Bhd (Majlis Peguam Malaysia, intervener)* [2021] 10 MLJ 563, HC (refd)

*Wan Ahmad bin Wan Daud Iwn Wan Jawahir bt Haji Harun* [2016] 2 MLJ 51, CA (folld)

**Legislation referred to**

Legal Profession Act 1976 ss 94(3), (3)(c), (3)(d), (3)(k), (3)(m), (3)(n), (3)(o), 100(1)(b)(ii), 103A, 103B, 103C(1)(c), 103D(4)

Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994

National Land Code Form 14A

*V Amareson (Amareson & Meera) for the appellant.*
*Stephanie Khaw Chia Ling (Khaw Ewe Seng & Co) for the respondent.*
*Teng Wei Hun (Skrine) for the intervener.*

**Amarjeet Singh J:**

## INTRODUCTION

**[1]** This is an appeal by the appellant, an advocate and solicitor, against the order of the Advocates and Solicitors Disciplinary Board ('the Board') dated 8 April 2022 which had affirmed the recommendation of the Disciplinary Committee ('the Committee') on the finding of misconduct but had rejected the recommendation of punishment, namely, striking off the appellant from the Roll of Advocates and Solicitors and imposed a lesser punishment, a fine of RM50,000 to be paid to the discipline fund within one month from the date of the said order.

**[2]** The appellant in its oral submissions before me raised three grounds of appeal:

(a) the first respondent, Tan Sri Dato' Seri Dr Mahadevan a/l A Mahalingam

had no locus standi to lodge a disciplinary complaint against the appellant to the Board;

(b) there was a failure to comply with s 94(3) of the LPA, in that, no specific misconduct was framed against the appellant; and

(c) the appellant was not heard when the Board decided to reject the recommendation of the Committee striking the appellant off the Rolls of Advocates and Solicitors and render the punishment of a fine of RM50,000 under s 103D of the LPA.

**[3]** On 15 December 2023,1 dismissed the appeal. This judgment contains the reasons for my decision.

THE BACKGROUND FACTS

**[4]** The complaint of misconduct made by the first respondent is predicated on the following facts. The first respondent and one Sandrasegaran s/o'Mahalingam were the executors of the will of their late brother, Ratnavale. The will is dated 10 February 1971. The beneficiaries under the will are Ratnavale's legal wife, his mother, and six children. Probate was extracted on 9 May 1974. Thereafter, began years of litigation through several court cases.

**[5]** Dr Jeyalakshmi d/o Ratnavale ('Jeyalakshmi') and Panchanath s/o Ratnavale, the children of Ratnavale and the beneficiaries under the will had engaged the appellant to file a suit against seeking accounts and distribution of the properties of the estate against the executors. One of the properties in dispute was Lot 743, Section 3, Georgetown, North East District, Penang ('Lot 743').

**[6]** It turns out that the appellant was involved in the transfer of Lot 743 to his wife, Muniamah a/p Subramaniam ('Muniamah') pursuant to a letter dated 27 September 1972 ('the 1972 letter') through Jeyalakshmi as administrator of the estate. The 1972 letter was purportedly made between Ratnavale and Subramaniam s/o Kuppusamy, the appellant's father-in-law ('Subramaniam') wherein Ratnavale allegedly agreed to sell Subramaniam Lot 743 for the sum of RM40,000. The existence of the 1972 letter was not known of, produced in court, or mentioned by the appellant in the said civil suits until it was used to transfer Lot 743 to Muniamah.

**[7]** To facilitate the transfer, the appellant, on 9 May 2014 settled an affidavit for Jeyalakshmi in the following words: 'In the event we refuse to honour the aforesaid agreement entered into by my late father, it is almost certain that legal proceedings will be commenced against us, which my siblings and I very much wish to avoid. ... In the alternative, my solicitors advise me which I verily

A believe to be true that I ought to seek an order from this honourable court authorizing me to sell and transfer the said Lot 743, Section 3, Georgetown, North East District, Penang to Muniamah a/p Subramaniam based on the consideration stated in the letter dated 27.9.1972 made between my father and the said Subramaniam s/o Kuppusamy, which I humbly seek'.

B

**[8]** Lot 743 was then successfully transferred to the appellant's wife, Muniamah on 9 July 2014, notwithstanding, that the appellant knew that it was part of the Ratnavale's estate.

C

**[9]** The will was subsequently in one of the cases set aside as null and void but restored by the Court of Appeal on 30 September 2016. The Court of Appeal ordered that the properties of the estate be distributed according to the will of the beneficiaries. The properties included Lot 743 which then had D already been transferred to and was in the name of the appellant's wife, Muniamah. In view of the order of the Court of Appeal, on 28 February 2017, Muniamah, issued a letter, settled by the appellant, to Jeyalakshmi which, inter alia, stated as follows:

E > I refer to the above case and understand you are applying to the court for an order to sell Lot 743 ... which you transferred to me in 2014 pursuant to Order of the Penang High Court dated 11.6.2016. As per your request in light of the Court of Appeal's decision on 30.9.2016 that Lot 743 ... has been declared to be distributed among all 8 beneficiaries named in your father's will, I hereby agree that I will sell Lot 743 at your request so as to save you the costs and disbursements of a re-transfer.

F

**[10]** On 26 April 2017, the appellant prepared and filed an affidavit, on behalf of his client, Jeyalakshmi assuring her that the transfer was legally carried out in the following words:

G > The said transfer was done regularly and legally vide order of the Penang High Court dated 11.6.2014 and in addition to the said order of court, I appeared personally before an independent solicitor, Ms Stella Soo to execute the Transfer Form 14A.

H

**[11]** The memorandum of transfer in Form 14A was introduced in court wherein Lot 743 was purportedly sold to Muniamah for RM2.244m. The said Form 14A was attested by Ms Stella Soo. However, when a search was conducted at the land office, it was discovered that a different Form 14A was I actually lodged in the land office which led to the transfer of Lot 743 to Muniamah. It was not the Form 14A attested to by Ms Stella Soo. The evidence revealed that the appellant attested as the solicitor for both his client, Jeyalakshmi as seller, and his wife, Muniamah as purchaser in the sale and purchase transaction.

**[12]** On 17 May 2019, a further search on Lot 743 revealed that the property had a lien holder's caveat lodged by the appellant as a solicitor for one, Amar Pritpal bin Abdullah ('the caveator'). The caveator's reason was stated in the statutory declaration in support of lodging the caveat as follows:

> Since 1998 to this date spanning 18 years, at the request of Govindaraju a/l Kuppusamy, I have advanced monies from my personal funds for the purpose of funding the aforesaid litigation to be repaid upon collection of the fees from his clients after the completion of the litigation ... All in Govindaraju and I are in agreement that my advances to date are approximately Ringgit Malaysia Four Million (RM4,000,000.00) only as security for the repayment of the aforesaid advances, without interest, the lawful wife of Govindaraju, one Muniamah a/p Subramaniam as the registered owner of Lot 743 ... has deposited with me the aforesaid Geran No ... as a lien ... for the advances made before and for further advances to be made pending the repayment aforesaid of RM4,000,000.00.

## THE COMPLAINT TO THE BOARD

**[13]** The first respondent filed a complaint with the Board on 13 February 2017. The Board under s 100(1)(b)(ii) of the LPA found merit in the complaint and sent the complaint to the appellant and sought an explanation. The appellant submitted a written explanation supported by documents dated 8 June 2017. The first respondent responded to the explanation by providing a reply dated 9 August 2017 together with supporting documents to rebut the appellant's explanation. Thereafter, the appellant submitted a written submission dated 27 December 2017, and the first respondent submitted his written submissions on 30 April 2018. The Board found merit in the first respondent's complaint. On 18 May 2018, the Board after hearing the appellant's counsel, proceeded to appoint the Committee as required by s 103A of the LPA. At all material times, both before the Board and the Committee, the appellant was represented by counsel.

### *The report of the Committee and the order of the Board*

**[14]** The appellant raised several preliminary objections at the inquiry that was convened under s 103B of the LPA to hear the complaint. One of the preliminary objections was that the first respondent was not competent or authorised to make the complaint against the appellant ie that the first respondent had no locus standi to make the complaint against the appellant. The Committee had dismissed the preliminary objection.

**[15]** At the conclusion of the inquiry, after considering the complaint, hearing witnesses, perusing documentary evidences, and considering the submissions made, the Committee proceeded to record its findings wherein it had found that cause for disciplinary action existed and that the liability was of such gravity to warrant the punishment of striking the appellant off the Roll of

Advocates and Solicitors under s 103C(1)(c) of the LPA.

**[16]** The Committee found that the actions of the appellant amounted to misconduct involving conflict of interest, unbefitting conduct of acting dishonestly, acting in gross disregard of his client's interests, and failing to adhere to the Legal Profession Rules. As shown above, the Board affirmed the findings of the Committee on misconduct but rejected the punishment of striking out as it thought the lesser punishment of a fine of RM50,000 would be more appropriate.

## GROUNDS OF APPEAL

**[17]** The appellant raised several grounds of appeal but before me proceeded on the following three grounds only:

(a) the first respondent had no locus standi to lodge the disciplinary complaint against the appellant to the Board (the 'locus standi' ground);

(b) the misconduct the appellant was charged with was vague and not specific (the 'vague misconduct' ground); and

(c) that the appellant was not given a right to be heard before the Board reduced the punishment from struck off the Roll of Advocates and Solicitors to a fine as required by s 103D(4) of the LPA (the 'right to be heard on punishment' ground).

## DECISION OF THE COURT

**[18]** It is opportune, before considering each ground of appeal, to set out the principles for appellate intervention in appeals against the decision of the Board that guides me. In *Majlis Peguam v Dato Sri Dr Muhammad Shafee Abdullah* [2016] 5 MLJ 572; [2016] 8 CLJ 749 the principles of appellate intervention were succinctly summarised as follows:

> Unless the disciplinary committee in the exercise of its powers can be shown to have erred in principle or to have overlooked, misconceived, or disregarded some material matter of fact, or to have failed to act judicially, the court ought not interfere, except in the rarest of cases. This principle has been applied consistently by our courts (see cases of *Re A Solicitor (No 2)* [1923] 93 LJ KB 761, *Re A Solicitor* [1969] 3 All ER 610, *Keith Sellar v Lee Kwang; Tennakoon v Lee Kwang* [1980] 2 MLJ 191; [1980] 1 MLRA 461; *Gana Muthusamy v LM Ong & Co* [1998] 3 MLJ 341; [1998] 2 MLRA 208; *Merchant v Law Society of Saskatchewan* [2002] 8 WWB 214).

**[19]** In *Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener)* [2018] 2 MLJ 265; [2018] 2 CLJ 1, the Federal Court reiterated the limited circumstances under which appellate intervention

may be justified on the finding of facts and the recommendations made by the Committee:

> [23] ... The courts should only interfere with the finding of facts and recommendations of the DC in the following limited circumstances ie:
>
> (i) when the findings are manifestly perverse;
>
> (ii) the DC/DB had failed as right-thinking members of the Bar to give due consideration to the facts of the case and the conduct of the solicitor complained against; and
>
> (iii) there had been a breach of natural justice.

**[20]** Keeping the above principles in mind, I will now address each ground of appeal separately.

*The 'locus standi' ground*

**[21]** The appellant argued that the first respondent has no interest in the matter and is not an aggrieved party and as such is not competent to make any complaint against the appellant. As such both the Committee's report which contains its findings and recommendation and the Board's actions considering the said report culminating in the Board's order are all null and void. I was unable to agree with this submission and dismissed the same.

**[22]** The question for determination called for by the submission of the appellant is whether the first respondent qualifies as a 'complainant' for the purposes of disciplinary action against an advocate and solicitor under the LPA. The answer to this question lies in the meaning given to the word 'complainant' under the LPA. The LPA provides for rules to be made in respect of disciplinary proceedings under the LPA. At the time the first respondent filed his complaint the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 were still in force. A 'complainant' under these rules was defined as follows:

> ... *the person who* has made a *complaint,* whether personally or through his solicitor, and includes the Bar Council and a State Bar Committee.

**[23]** The definition requires a 'complaint' to be made. It is so wide that it can be made by any person against an advocate and solicitor and includes the Bar Council or a State Bar Committee. However, the limitation is that the 'complaint' must fulfill the requirements of the said rules. The word 'complaint' is defined and means 'a written complaint concerning the misconduct of an advocate and solicitor or a pupil'. The word 'misconduct' in relation to an advocate and solicitor is further defined and is given the meaning as assigned to it under s 94(3) of the LPA. The meaning of 'misconduct' under

s 94(3) of the LPA is as follows:

> 'misconduct' *means conduct* or omission to act in Malaysia or elsewhere by an advocate and solicitor *in a professional capacity or otherwise which amounts to grave impropriety and includes* —
>
> (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
>
> (b) breach of duty to a court including any failure by him to comply with an undertaking given to a court;
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> (c) dishonest or fraudulent conduct in the discharge of his duties;
>
> (d) breach of any rule of practice and etiquette of the profession made by the Bar Council under this Act or otherwise;
>
> (e) being adjudicated a bankrupt and being found guilty of any of the acts or omissions mentioned in paragraph 33(6)(a), (b), (c), (e), (f), (h), (k) or (l) of the Bankruptcy Act 1967;
>
> (f) the tendering or giving of any gratification to any person for having procured the employment in any legal business of himself or any other advocate and solicitor;
>
> (g) directly or indirectly procuring or attempting to procure the employment of himself or any other advocate and solicitor through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
>
> (h) accepting employment in any legal business through a tout;
>
> (i) allowing any unauthorized person to carry on legal business in his name without his direct and immediate control as principal or without proper supervision;
>
> (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
>
> (k) the breach of any provision of this Act or of any rules made thereunder or any direction or ruling of the Bar Council;
>
> (l) the disbarment, striking off, suspension or censure in his capacity as a legal practitioner in any other country or being guilty of conduct which would render him to be punished in any other country;
>
> (m) the charging, in the absence of a written agreement, in respect of professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
>
> (n) gross disregard of his client's interests; and

(o) being guilty of any conduct which is unbefitting of an advocate and solicitor or which brings or is calculated to bring the legal profession into disrepute.

**[24]** Thus, misconduct, inter alia, is conduct by an advocate and solicitor in a professional capacity or otherwise which amounts to grave impropriety and which conduct includes any one or more of the fifteen instances listed in s 94(3) of the LPA. The first respondent had lodged a written complaint with the Board on 13 February 2017 attaching supporting documents alleging the following acts committed by the appellant:

(a) the appellant as counsel for Jeyalakshmi obtained an order dated 18 March 2011 appointing Jeyalakshmi as legal representative of the estate even though Probate had been granted and extracted on 9 May 1974;

(b) on 5 March 2014, the appellant obtained letters from the administration making Jeyalakshmi the administrator of lire eslale and thereafter in an ex parte originating summons applied for the transfer of several properties which included Lot 743 which was transferred to the appellant's wife, Muniamah on 11 June 2014;

(c) the transfer was made purportedly on a letter for sale of Lot 743 dated 27 September 1972 which was unknown till before; and

(d) on 18 October 2016, the appellant, acting for the alleged second wife of Ratnavale, Fam Kim Moy, to set aside Ratnavale's will and the probate granted to the first respondent and Sandrasegaran, the executors of the will.

**[25]** The misconduct alleged in the written complaint against the appellant was stated as follows:

(a) the appellant had acted improperly and in an unprofessional manner when he knew that probate had been extracted, as he had been acting for the beneficiaries of the will against the first respondent and Sandrasegaran for accounts and distribution of the estate properties, and yet obtained letters of administration making Jeyalakshmi the administrator of the estate and proceeded to transfer properties on that basis (the misconduct of 'conduct amounting to grave impropriety'); and

(b) the appellant who had been acting for the beneficiaries of the will on the basis that the Ratnavale will be valid and authentic (see *Panchanath a/l Ratnavale (suing as the beneficiary to the estate of Ratnavale s/o Mahalingam @ Mahalingam Ratnavale deceased under will dated 10 February 1971) v Sandra Segara Mahalingam (sued as the executor and trustee of the last will of Ratnavale s/o Mahalingam @ Mahalingam*

A *Ratnavale deceased dated 10 February 1971) & Ors* [2012] 5 MLJ 109) proceeded to act in conflict of his client's interest by filing a suit on behalf of Fam Kim Moy to set aside the will and probate (the misconduct of 'gross disregard of his client's interest').

B **[26]** I am satisfied that the first respondent falls within the definition of 'complainant' under the said rules. There was a written complaint supported by documents of the misconduct of the appellant. The misconduct, which was clearly set out in the written complaint, was misconduct which fell within the scope of s 94(3) of the LPA. There was no error of law by the Board in accepting C the complaint by the first respondent who satisfied the criteria of a 'complainant' under the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994. In the circumstances, the ground of appeal is devoid of merit.

D *The 'vague misconduct' ground*

**[27]** I found this ground of appeal also devoid of merit. By the time the matter went for inquiry before the Committee appointed by the Board, the first E respondent had filed a statutory declaration which set out clearly the misconduct of the appellant and the issues to be determined by the Committee. The facts making out the misconduct alleged against the appellant were set out in detail. The appellant was made very well aware of the case he had to meet.

F **[28]** Apart from the above, the notes of proceedings show that at the inquiry held on 17 August 2020, the Chairman of the Committee, in the presence of the appellant, had asked counsel for the first respondent to specify the heading of misconduct against the appellant. Counsel for the first respondent stated G that the misconduct alleged were under s 94(3)(c), (d), (k), (m), (n), and (o) of the LPA. As such there was no breach of natural justice or a right to be heard. The misconduct was not vague. It was specific and clear.

**[29]** The Committee after hearing the appellant, the documents presented H by the appellant, the documents presented by the first respondent, and the submissions of the parties arrived at the following findings of misconduct proven beyond reasonable doubt based on the complaint by the first respondent:

I (a) that the appellant had knowingly entered into a conflict of interest situation when he represented Jeyalakshmi and her siblings and at the same time facilitated the transfer of Lot 743 to his wife, Muniamah;

(b) the appellant brought Jeyalakshmi to sign the unregistered Form 14A at Stella Soo's office and had admitted orally before the Committee that if

the High Court had sight of the unregistered Form 14A the court would have concluded that Lot 743 was part of a conflict of interest transaction;

(c) the appellant had prepared an affidavit in reply that referred to and exhibited the unregistered Form 14A to prove that Lot 743 had been properly transferred to his wife, Muniamah, despite the fact that the transfer was registered at the land office using a different Form 14A. The affidavit in reply was prepared such as to prevent the High Court from seeing a conflict of interest existed;

(d) the appellant had settled an affidavit for affirmation by Jeyalakshmi knowing the facts were not true and caused Jeyalakshmi to affirm a false affidavit for the High Court's consideration in determining the matter before it. In doing so the appellant had acted in gross disregard to Jeyalakshmi's interests;

(e) a contingency fee arrangement existed between Jeyalakshmi and the appellant establishes the fact that the appellant had acquired a pecuniary interest in the matter;

(f) the appellant had admitted to the preparation of two sets of Form 14A for the transfer of Lot 743 in order to evade paying stamp duty on the actual market value of the property. The appellant had committed an act of dishonesty to the Inland Revenue Board; and

(g) the appellant had defied an injunction against him which injuncted him from dealing with Lot 743 by the act of lodging the lien holder's caveat in favour of Pritpal. The appellant admitted that Pritpal had never advanced the sum of RM4m to advance the litigation to lodge a lien holder's caveat on the land. The appellant was found to have committed an act of dishonesty against the land office and engaged in conduct unbefitting of an advocate and solicitor.

**[30]** From the records, I am satisfied that the appellant was sufficiently informed and supplied with the facts and particulars of misconduct complained of to enable him to explain away or exculpate himself. The appellant was given the right to be heard which is in conformity with natural justice.

*The 'right to be heard on punishment' ground*

**[31]** The appellant submitted that the Board had not given the appellant a reasonable opportunity of being heard under s 103D(4) of the LPA which read as follows:

> Before the Disciplinary Board makes an order *that is likely to be adverse against an advocate and solicitor* under subsection (2) or (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.

**[32]** The recommendation of the Committee on liability and punishment is reproduced first:

> It is the unanimous finding of this DC that cause for disciplinary action exists against the Respondent, Govindaraju s/o Kuppusamy. Because this misconduct involves a conflict of interest, unbefitting conduct by the Respondent, acting dishonestly, acting in gross disregard of his client's interest, and failing to adhere to the Legal Profession Rules, a mere fine or suspension would not reflect the seriousness of the various offenses. A more proportionate punishment would be striking off.

**[33]** The Board pronounced its order against the appellant as follows:

> In exercise of the powers conferred by Section 103D of the Legal Profession Act 1976 (the Act), the Disciplinary Board having on 08 April 2022 considered the report made by the Disciplinary Committee on the complaint against the Respondent, affirmed the Disciplinary Committee's finding of liability but rejected the recommendation on punishment for striking off, instead IT IS HEREBY ORDERED that the Respondent do pay a fine of Ringgit Malaysia Fifty Thousand (RM50,000.00) only payable to the Discipline Fund within one (1) month from the date of this Order AND IN DEFAULT THEREOF Section 103(1) of the Act shall apply.

**[34]** The Board was clear that it had meted out a lesser punishment than that recommended. It was submitted that the order of the Board to reduce the punishment was not an order 'adverse' of the appellant under s 103D(4) of the LPA and that reasonable opportunity to be heard on punishment only arises if the punishment that the Board has in mind is more severe than that recommended. The first respondent relied on the decision of the Court of Appeal in *Wan Ahmad bin Wan Daud Iwn Wan Jawahir bt Haji Harun* [2016] 2 MLJ 51 on this interpretation of s 103D(4) of the LPA.

**[35]** During oral arguments the appellant referred to the High Court case of *Syed Ahmad Imdadz B Said Abas v Imej Muhibah Sdn Bhd (Majlis Peguam Malaysia, intervener)* [2021] 10 MLJ 563 where the court was faced with the uncertainty as to whether the punishment of a fine of RM30,000 which was meted out by the Board rejecting the Committee's recommendation of suspension of two years was likely to be adverse to the advocate and solicitor. On these facts ie since it was not likely to be adverse, the High Court decided that the advocate and solicitor ought to have been given a reasonable opportunity to be heard on punishment.

**[36]** The Court of Appeal affirmed the High Court. The reason, which is merely speculation, since there was no written judgment, would most likely be that due to the uncertainty of whether the punishment was adverse or lighter than the recommended punishment, a reasonable right to be heard ought to be

given. The case did go to the Federal Court but there was at the time of hearing oral submissions and fixing a date for decision in the instant case no Federal Court judgment brought to the attention to assist this court.

**[37]** Suffice it to say, that I followed the Court of Appeal decision of *Wan Ahmad bin Wan Daud* at the time of making the decision. I dismissed the ground of appeal on the basis that the punishment of fine was a lighter punishment and therefore not adverse to the appellant, given that, being struck off the Roll of Advocates and Solicitors was the severest punishment.

**[38]** I must, however, confess to being unaware of the written judgment of the Federal Court in *Majlis Peguam Malaysia v Syed Ahmad Imdadz bin Said Abad & Anor* [2024] 1 MLJ 527; [2023] MLRAU 275 although a copy was filed in court, after oral submissions but before the date of decision. The judgment was attached to the appellant's supplementary submissions. I only realised of this submission much later. By that time, I had delivered my decision. The law enunciated by the Federal Court had in fact overruled the Court of Appeal decision, which I relied on. The law was stated as follows:

> [26] Section 103D(4) of the LPA is the final tier for the affected advocate and solicitor to defend himself or herself before the final order is imposed upon him by the DB. If the DB sought to impose a punishment or penalty different from the recommendation of the DC, whether adverse to Syed or not, then it should have notified him of its intention to do so and given him a reasonable opportunity to be heard irrespective of whether it is of a greater or lesser penalty or punishment or that is likely to be adverse. On the issue of 'lesser or greater' punishment, the learned High Court judge articulated in his grounds of judgment that it is difficult to conclude as to which is a greater or lesser punishment. The High Court ruled, which we agreed, that before the DB intends to impose any punishment, it ought to have given the advocate and solicitor concerned, in this case, Syed, a reasonable opportunity to be heard.
>
> ...
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> [30] Having carefully considered the submissions of all parties, we agreed with the decisions of the High Court and the Court of Appeal. For the foregoing reasons, question (i) is answered in the affirmative in that an advocate and solicitor should be given the opportunity to be heard under s 103D(4) of the LPA before the DB makes an order whether to impose a greater or lesser penalty or punishment than what is recommended by the DC. Question (ii) is also answered in the affirmative in that if the DB intends to impose any punishment, it must give the advocate and solicitor a reasonable opportunity to be heard irrespective if it is likely to be adverse or otherwise before imposing a greater or a lesser punishment.

**[39]** In view of the above Federal Court decision my decision on this ground certainly cannot stand. The appellant ought to have been heard before the punishment of fine was meted out.

A CONCLUSION

**[40]** It was for the above reasons that I had dismissed the appellant's appeal.

*Appellant's appeal dismissed.*

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Reported by Dzulqarnain Ab Fatar

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